

ATTACHMENT A

FILED

JAN 11 2022

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

RETURN COPY

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR GRANT COUNTY

OREGON POTATO COMPANY, a
Washington corporation,

Plaintiff,

v.

KINSALE INSURANCE COMPANY, a
foreign corporation,

Defendant.

NO.

22-2-00019-13

COMPLAINT FOR DECLARATORY
RELIEF, BREACH OF CONTRACT, BAD
FAITH, VIOLATION OF THE
CONSUMER PROTECTION ACT, AND
VIOLATION OF THE UNFAIR CLAIMS
SETTLEMENT PRACTICE ACT

Plaintiff Oregon Potato Company ("OPC") alleges as follows:

INTRODUCTION

1. **Summary of Action.** This is an action for declaratory judgment, breach of contract, and bad faith seeking, *inter alia*, a declaration of the rights and duties of OPC and Kinsale Insurance Company ("Kinsale") under Policy No. 0100119685-0 ("Policy"). The Policy provides excess property insurance coverage to OPC with limits of "\$5,000,000 Part of \$25,000,000 Excess of \$25,000,000 Per Occurrence."

COMPLAINT - 1

GORDON 600 University Street
TILDEN Suite 2915
THOMAS Seattle, WA 98101
CORDELL 206.467.6477

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR GRANT COUNTY

OREGON POTATO COMPANY, a
Washington corporation,

Plaintiff,

v.

KINSALE INSURANCE COMPANY, a
foreign corporation,

Defendant.

NO.

COMPLAINT FOR DECLARATORY
RELIEF, BREACH OF CONTRACT, BAD
FAITH, VIOLATION OF THE
CONSUMER PROTECTION ACT, AND
VIOLATION OF THE UNFAIR CLAIMS
SETTLEMENT PRACTICE ACT

Plaintiff Oregon Potato Company (“OPC”) alleges as follows:

INTRODUCTION

1. **Summary of Action.** This is an action for declaratory judgment, breach of contract, and bad faith seeking, *inter alia*, a declaration of the rights and duties of OPC and Kinsale Insurance Company (“Kinsale”) under Policy No. 0100119685-0 (“Policy”). The Policy provides excess property insurance coverage to OPC with limits of “\$5,000,000 Part of \$25,000,000 Excess of \$25,000,000 Per Occurrence.”

2. On January 21, 2021, a massive fire occurred in OPC's facility in Warden, Washington. OPC timely tendered an insurance claim ("Claim") to Kinsale for the tens of millions of dollars in insured losses it suffered.

3. Kinsale has paid some of OPC's Claim, but has unreasonably withheld Policy payments and benefits based on a theory that it is liable for only 20% of Kinsale's \$25 million excess of \$25 million layer of insurance. Kinsale has also withheld Policy payments and benefits based on an erroneous application of OPC's Statement of Values. Through this lawsuit, OPC seeks:

- (a) Declaratory relief;
- (b) Damages for breach of Kinsale's contractual duties under the Policy;
- (c) Damages for Kinsale's bad faith and violations of the Washington Consumer Protection Act ("WCPA") and the Washington Unfair Claims Settlement Practices Act, including actual, compensatory, and multiplied damages;
- (d) Pre-judgment and post-judgment interest; and
- (e) Attorneys' fees and costs incurred by OPC in pursuing its insurance claim and prosecuting this action, pursuant to the WCPA and the rule in *Olympic Steamship Co., Inc. v. Centennial Ins. Co.*, 117 Wn.2d 37 (1991), and its progeny.

THE PARTIES

4. **Plaintiff OPC.** OPC is a corporation organized under the laws of the State of Washington. OPC is a vegetable processor. OPC sources from farms located around the state, employs hundreds of Washington residents, and produces millions of pounds of produce for its customers.

5. **Defendant Kinsale.** Kinsale is a foreign insurance company, incorporated under the laws of Arkansas with its principal place of business in Virginia.

JURISDICTION AND VENUE

6. **Jurisdiction.** This Court has subject matter jurisdiction under RCW 2.08.010 and RCW 7.24.020. It has personal jurisdiction because Kinsale conducts business in Grant County and because the actions and events giving rise to this cause of action occurred in Grant County.

7. **Venue.** Venue is proper under RCW 48.05.220, which provides: “Suits upon causes of action arising within this state against an insurer upon an insurance contract shall be brought in the county where the cause of action arose.” It is also proper under RCW 4.12.025.

STATEMENT OF FACTS

The Insurance Policy and the Covered Loss

8. The Policy provides property and business income insurance to OPC for a variety of locations. Among those locations is the warehouse in Warden, where a large fire occurred in January 2021. The warehouse was totally destroyed and an adjacent storage building was also damaged. OPC also suffered extra expense and time element/business interruption loss. There is no dispute the fire is a covered loss and Claim under the Policy.

9. OPC's property insurance tower contains \$50 million in limits. All of OPC's insurers, except Kinsale (and another insurer, Landmark American Insurance Company) have paid the limits of their policies in response to the Claim.

10. OPC has presented proof of physical and financial damage that exhausts Kinsale's entire \$5 million limit. Kinsale, however, has paid just \$536,416.69 so far, leaving \$4,463,583.32 of the \$5 million limit unpaid.

11. Kinsale has sent no correspondence to OPC explaining the basis in the Policy for its limited payments. As best OPC can tell, Kinsale's limited payments are based on its view that its \$5 million limit makes up 20% of the entire \$25 million excess of \$25 million layer of insurance, so it owes only 20% of OPC's Claim. Kinsale is also apparently contending that OPC's Statement of Values limits recoverable insurance for the destroyed warehouse to \$25.1 million; because OPC's other insurers have already paid \$25 million for the warehouse, OPC believes Kinsale erroneously considers its liability is limited to just \$100,000, and then only 20% of \$100,000.

12. On January 10, 2022, OPC sent an IFCA notice to Kinsale.

13. OPC has complied with any and all conditions precedent to bringing this action.

FIRST CLAIM: DECLARATORY JUDGMENT

14. **Incorporation by Reference.** The allegations of the preceding paragraphs are incorporated by reference, as if fully set forth herein.

15. **Coverage Under the Policy.** A real and justiciable controversy exists over the coverage provided by the Policy, including the scope and extent of coverage and/or benefits.

16. **Estoppel.** Kinsale has never articulated any basis for its coverage position in writing to OPC. In the event Kinsale seeks to do so, or to add to or change the basis of its denial of Policy benefits, a real and justiciable controversy exists over whether Kinsale is estopped from doing so. These estoppel principles are addressed, *inter alia*, in *Vision One v. Philadelphia Indem. Ins. Co.*, 174 Wn.2d 501 (2012), *Ledcor Indus. (USA) Inc. v. Virginia Sur. Co., Inc.*, No. 09-CV-01807 RSM, 2012 WL 223904 (W.D. Wash. Jan. 25, 2012), and *Karpenski v. Am. Gen. Life. Co., LLC*, 999 F. Supp. 2d 1235 (W.D. Wash. 2014).

1 17. **Declaratory Relief.** OPC is entitled to a declaration by this Court that the full
2
3 \$5 million is due from Kinsale and that Kinsale is estopped from raising any defenses to
4
5 coverage other than as might have been provided prior to the filing of this action or the change in
6
7 OPC's financial position taken in reliance on and expectation of Kinsale abiding by the Policy.
8

9
10 **SECOND CLAIM: BREACH OF CONTRACT**

11 18. **Incorporation by Reference.** The allegations of the preceding paragraphs are
12
13 incorporated by reference, as if fully set forth herein.
14

15 19. **Breach of Contract.** Kinsale breached the contract of insurance at issue by
16
17 failing or refusing to pay for the full amount of Policy benefits it owes as a result of the Claim,
18
19 misrepresenting the terms of the Policy and/or failing to explain the basis for its limited
20
21 payments, and not otherwise discharging its obligations under the Policy.
22

23 20. **Damages.** As a direct and proximate result of Kinsale's breach of the insurance
24
25 contract, OPC has been prejudiced and deprived of the benefits of its insurance coverage under
26
27 the Policy. OPC is entitled to a money judgment against Kinsale for the Claim and any and all
28
29 other damages, benefits, and reimbursements to which OPC is entitled under the provisions of
30
31 the Policy, plus any and all consequential damages flowing from that breach.
32

33 21. **Additional Damages.** As another direct and proximate result of Kinsale's
34
35 breach, OPC has been forced to incur attorney fees and other expenses in order to prosecute this
36
37 action and is entitled to reimbursement of these fees and expenses in accordance with the
38
39 principles announced in *Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 11 P.2d
40
41 673 (1991), and its progeny.
42
43
44
45

**INSURANCE BAD FAITH AND BREACH OF THE COVENANT OF
GOOD FAITH AND FAIR DEALING**

22. **Incorporation by Reference.** The allegations of the preceding paragraphs are incorporated by reference, as if fully set forth herein.

23. **Duty of Good Faith and Fair Dealing.** Kinsale owes OPC a statutory and common law duty of good faith and fair dealing. Pursuant to that duty, Kinsale is obliged to refrain from taking any action that is unreasonable or unfounded. Kinsale is likewise required to deal fairly with OPC and give equal consideration to (and not put its own interests ahead of) OPC's financial interests.

24. **Kinsale Acted in Bad Faith.** Kinsale breached its duty of good faith and fair dealing as set forth in this Complaint, including by unreasonably withholding Policy payments, failing to explain the basis for its limited payments, improperly applying Policy terms, offering trivial and inadequate amounts for OPC's Claim, using the SOV as an excuse for withholding additional payments, failing to fully disclose Policy benefits and coverages, placing its financial interests ahead of OPC's, failing to abide by the Washington Administrative Code, WAC 284-30-330, 350, and 380, and not attempting in good faith to effectuate prompt, fair, and equitable settlements of OPC's Claim.

25. **Damages.** As a direct and proximate result of Kinsale's breach of the covenant of good faith and fair dealing, OPC has suffered damages in an amount to be proven at trial.

**SIXTH CLAIM: VIOLATION OF THE WASHINGTON
UNFAIR CLAIMS SETTLEMENT PRACTICES ACT (WAC 284-30, ET SEQ.)
AND THE WASHINGTON CONSUMER PROTECTION ACT (RCW 19.86)**

26. **Incorporation by Reference.** The allegations of the preceding paragraphs are incorporated by reference, as if fully set forth herein.

27. **Violation of WAC 284-30, *et seq.*** Washington has adopted the Unfair Claims Settlement Practices Act under Chapter 284-30, *et seq.* of the WAC. Kinsale violated the Unfair Claims Settlement Practices Act, including separate provisions of WAC 284-30-330, 350, and 380, as described above.

28. **Damages.** The violation of one provision of the Unfair Claims Settlement Practices Act is a *per se* violation of the WCPA, entitling OPC to the exemplary damages, attorney fees, and costs. Kinsale also committed non *per se* violations of the WCPA.

**RESERVATION TO ASSERT CLAIMS FOR VIOLATION OF
THE INSURANCE FAIR CONDUCT ACT (RCW 48.30.015)**

29. **Incorporation by Reference.** The allegations of the preceding paragraphs are incorporated by reference, as if fully set forth herein.

30. **IFCA Notice.** On January 10, 2022, OPC filed a 20-day IFCA Notification Sheet with the Office of the Insurance Commissioner. This written notice, along with the bases for OPC's IFCA cause of action, was also provided to Kinsale. OPC reserves the right to add a cause of action for IFCA should Kinsale fail to cure its IFCA violations and resolve the bases for OPC's IFCA claim.

31. **General Reservation.** OPC reserves the right to amend this Complaint to add additional facts and claims as permitted by the Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, OPC prays for the following relief:

A. **Declaratory Judgment.** That this court declare and decree that Kinsale is liable for its full \$5 million limit of liability.

1 **B. Breach of Contract.** That this court declare and decree Kinsale breached the
2
3 Policy.
4

5 **D. Extra Contractual Violations.** That this court declare and decree Kinsale
6
7 breached the covenant of good faith and fair dealing, violated the Washington Administrative
8
9 Code 284-30, *et seq.* and the Unfair Claims Settlement Practices Act, and violated the WCPA.
10

11 **E. Money Damages.** That OPC be awarded money damages in its favor and against
12
13 Kinsale for the Claim, and any and all other damages, benefits, and reimbursements to which
14
15 OPC is entitled under the provisions of the Policy, at common law, or under the WCPA, together
16
17 with pre-judgment and post-judgment interest.
18

19 **F. Attorneys' Fees and Costs of Suit.** That OPC be awarded its reasonable
20
21 attorneys' fees and costs, including, without limitation, actual attorneys' fees pursuant to
22
23 *Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991).
24

25 **G. Other Relief.** For such further relief as the Court deems just, proper, and
26
27 equitable.
28

29 DATED this 10th day of January, 2022.
30

31 **GORDON TILDEN THOMAS & CORDELL LLP**
32 Attorneys for Plaintiff Oregon Potato Company
33

34 By 

35 Dale L. Kingman, WSBA #07060
36 Greg D. Pendleton, WSBA #38361
37 Brendan Winslow-Nason, WSBA #39328
38 600 University Street, Suite 2915
39 Seattle, Washington 98101
40 206.467.6477
41 dkingman@gordontilden.com
42 gpendleton@gordontilden.com
43 bwinslow-nason@gordontilden.com
44
45

Insurance Commissioner
ACCEPTED SOF
FEB 17 2022
TIME: 2pm

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR GRANT COUNTY

OREGON POTATO COMPANY, a
Washington corporation,

Plaintiff,

v.

KINSALE INSURANCE COMPANY, a
foreign corporation,

Defendant.

NO. 22-2-00019-13

AMENDED COMPLAINT FOR
DECLARATORY RELIEF, BREACH OF
CONTRACT, BAD FAITH, VIOLATIONS
OF THE CONSUMER PROTECTION
ACT AND THE INSURANCE FAIR
CONDUCT ACT, AND VIOLATION OF
THE UNFAIR CLAIMS SETTLEMENT
PRACTICE ACT

Plaintiff Oregon Potato Company ("OPC") alleges as follows:

INTRODUCTION

1. **Summary of Action.** This is an action for declaratory judgment, breach of contract, and bad faith seeking, *inter alia*, a declaration of the rights and duties of OPC and Kinsale Insurance Company ("Kinsale") under Policy No. 0100119685-0 ("Policy"). The Policy provides excess property insurance coverage to OPC with limits of "\$5,000,000 Part of \$25,000,000 Excess of \$25,000,000 Per Occurrence."

AMENDED COMPLAINT - 1

GORDON	600 University Street
TILDEN	Suite 2915
THOMAS	Seattle, WA 98101
CORDELL	206.467.6477

2. On January 21, 2021, a massive fire occurred in OPC's facility in Warden, Washington. OPC timely tendered an insurance claim ("Claim") to Kinsale for the tens of millions of dollars in insured losses it suffered.

3. Kinsale has paid some of OPC's Claim, but has unreasonably withheld Policy payments and benefits based on a theory that it is liable for only 20% of Kinsale's \$25 million excess of \$25 million layer of insurance. Kinsale has also withheld Policy payments and benefits based on an erroneous application of OPC's Statement of Values. Through this lawsuit, OPC seeks:

- (a) Declaratory relief;
- (b) Damages for breach of Kinsale's contractual duties under the Policy;
- (c) Damages for Kinsale's bad faith and violations of the Washington Consumer Protection Act ("WCPA"), the Insurance Fair Conduct Act ("IFCA"), and the Washington Unfair Claims Settlement Practices Act, including actual, compensatory, and multiplied damages;
- (d) Pre-judgment and post-judgment interest; and
- (e) Attorneys' fees and costs incurred by OPC in pursuing its insurance claim and prosecuting this action, pursuant to the WCPA, IFCA, and the rule in *Olympic Steamship Co., Inc. v. Centennial Ins. Co.*, 117 Wn.2d 37 (1991), and its progeny.

THE PARTIES

4. **Plaintiff OPC.** OPC is a corporation organized under the laws of the State of Washington. OPC is a vegetable processor. OPC sources from farms located around the state, employs hundreds of Washington residents, and produces millions of pounds of produce for its customers.

1 5. **Defendant Kinsale.** Kinsale is a foreign insurance company, incorporated under
2
3 the laws of Arkansas with its principal place of business in Virginia.
4

5 **JURISDICTION AND VENUE**
6

7 6. **Jurisdiction.** This Court has subject matter jurisdiction under RCW 2.08.010 and
8
9 RCW 7.24.020. It has personal jurisdiction because Kinsale conducts business in Grant County
10
11 and because the actions and events giving rise to this cause of action occurred in Grant County.
12

13 7. **Venue.** Venue is proper under RCW 48.05.220, which provides: "Suits upon
14
15 causes of action arising within this state against an insurer upon an insurance contract shall be
16
17 brought in the county where the cause of action arose." It is also proper under RCW 4.12.025.
18

19 **STATEMENT OF FACTS**
20

21 8. The Policy provides property and business income insurance to OPC for a variety
22
23 of locations. Among those locations is the warehouse in Warden, where a large fire occurred in
24
25 January 2021. The warehouse was totally destroyed and an adjacent storage building was also
26
27 damaged. OPC also suffered extra expense and time element/business interruption loss. There is
28
29 no dispute the fire is a covered loss and Claim under the Policy.
30

31 9. OPC's property insurance tower contains \$50 million in limits. All of OPC's
32
33 insurers, except Kinsale (and another insurer, Landmark American Insurance Company) have
34
35 paid the limits of their policies in response to the Claim.
36

37 10. OPC has presented proof of physical and financial damage that exhausts Kinsale's
38
39 entire \$5 million limit. Kinsale, however, has paid just \$536,416.69 so far, leaving
40
41 \$4,463,583.32 of the \$5 million limit unpaid.
42

43 11. Up until February 11, 2022, Kinsale sent no correspondence to OPC explaining
44
45 the basis in the Policy for its limited payments. As best OPC can tell, Kinsale's limited

1 payments are based on its view that its \$5 million limit makes up 20% of the entire \$25 million
 2
 3 excess of \$25 million layer of insurance, so it owes only 20% of OPC's Claim. Kinsale is also
 4
 5 apparently contending that OPC's Statement of Values limits recoverable insurance for the
 6
 7 destroyed warehouse to \$25.1 million; because OPC's other insurers have already paid
 8
 9 \$25 million for the warehouse, OPC believes Kinsale erroneously considers its liability is limited
 10
 11 to just \$100,000, and then only 20% of \$100,000.

12
 13 12. On January 10, 2022, OPC sent an IFCA notice to Kinsale.

14
 15 13. On February 11, 2022, Kinsale responded to the IFCA notice but did not cure its
 16
 17 IFCA violations.

18
 19 14. OPC has complied with any and all conditions precedent to bringing this action.

20
 21 **FIRST CLAIM: DECLARATORY JUDGMENT**

22
 23 15. **Incorporation by Reference.** The allegations of the preceding paragraphs are
 24
 25 incorporated by reference, as if fully set forth herein.

26
 27 16. **Coverage Under the Policy.** A real and justiciable controversy exists over the
 28
 29 coverage provided by the Policy, including the scope and extent of coverage and/or benefits.

30
 31 17. **Estoppel.** Kinsale did not articulate any basis for its coverage position in writing
 32
 33 to OPC prior to this suit being filed. On February 11, 2022, after this suit was filed, Kinsale sent
 34
 35 OPC a response to OPC's IFCA notice; in that response, Kinsale attempted to justify its limited
 36
 37 payments to OPC based on an "Occurrence Limit of Liability Endorsement." Kinsale's
 38
 39 interpretation of that endorsement is incorrect. It is also untimely insofar as it represents a
 40
 41 belated attempt by Kinsale to raise a defense to coverage, or to add to or change the basis of its
 42
 43 denial of benefits. A real and justiciable controversy exists over whether Kinsale is estopped
 44
 45 from raising, adding to, or changing the basis for its denial of benefits. These estoppel principles

1 are addressed, *inter alia*, in *Vision One v. Philadelphia Indem. Ins. Co.*, 174 Wn.2d 501 (2012),
 2
 3 *Ledcor Indus. (USA) Inc. v. Virginia Sur. Co., Inc.*, 2012 WL 223904 (W.D. Wash. Jan. 25,
 4
 5 2012), and *Karpenski v. Am. Gen. Life. Co., LLC*, 999 F. Supp. 2d 1235 (W.D. Wash. 2014).
 6

7 **18. Declaratory Relief.** OPC is entitled to a declaration by this Court that the full
 8
 9 \$5 million is due from Kinsale and that Kinsale is estopped from raising any defenses to
 10
 11 coverage other than as might have been provided prior to the filing of this action or the change in
 12
 13 OPC's financial position taken in reliance on and expectation of Kinsale abiding by the Policy.
 14

15 **SECOND CLAIM: BREACH OF CONTRACT**

16
 17 **19. Incorporation by Reference.** The allegations of the preceding paragraphs are
 18
 19 incorporated by reference, as if fully set forth herein.
 20

21 **20. Breach of Contract.** Kinsale breached the contract of insurance at issue by
 22
 23 failing or refusing to pay for the full amount of Policy benefits it owes as a result of the Claim,
 24
 25 misrepresenting the terms of the Policy and/or failing to explain the basis for its limited
 26
 27 payments, and not otherwise discharging its obligations under the Policy.
 28

29 **21. Damages.** As a direct and proximate result of Kinsale's breach of the insurance
 30
 31 contract, OPC has been prejudiced and deprived of the benefits of its insurance coverage under
 32
 33 the Policy. OPC is entitled to a money judgment against Kinsale for the Claim and any and all
 34
 35 other damages, benefits, and reimbursements to which OPC is entitled under the provisions of
 36
 37 the Policy, plus any and all consequential damages flowing from that breach.
 38

39 **22. Additional Damages.** As another direct and proximate result of Kinsale's
 40
 41 breach, OPC has been forced to incur attorney fees and other expenses in order to prosecute this
 42
 43 action and is entitled to reimbursement of these fees and expenses in accordance with the
 44
 45

principles announced in *Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 11 P.2d 673 (1991), and its progeny.

**INSURANCE BAD FAITH AND BREACH OF THE COVENANT OF
GOOD FAITH AND FAIR DEALING**

23. **Incorporation by Reference.** The allegations of the preceding paragraphs are incorporated by reference, as if fully set forth herein.

24. **Duty of Good Faith and Fair Dealing.** Kinsale owes OPC a statutory and common law duty of good faith and fair dealing. Pursuant to that duty, Kinsale is obliged to refrain from taking any action that is unreasonable or unfounded. Kinsale is likewise required to deal fairly with OPC and give equal consideration to (and not put its own interests ahead of) OPC's financial interests.

25. **Kinsale Acted in Bad Faith.** Kinsale breached its duty of good faith and fair dealing as set forth in this Complaint, including by unreasonably withholding Policy payments, failing to explain the basis for its limited payments, improperly applying Policy terms, offering trivial and inadequate amounts for OPC's Claim, using the SOV as an excuse for withholding additional payments, failing to fully disclose Policy benefits and coverages, placing its financial interests ahead of OPC's, failing to abide by the Washington Administrative Code, WAC 284-30-330, 350, and 380, and not attempting in good faith to effectuate prompt, fair, and equitable settlements of OPC's Claim.

26. **Damages.** As a direct and proximate result of Kinsale's breach of the covenant of good faith and fair dealing, OPC has suffered damages in an amount to be proven at trial.

**SIXTH CLAIM: VIOLATION OF THE WASHINGTON
UNFAIR CLAIMS SETTLEMENT PRACTICES ACT (WAC 284-30, ET SEQ.)
AND THE WASHINGTON CONSUMER PROTECTION ACT (RCW 19.86)**

27. **Incorporation by Reference.** The allegations of the preceding paragraphs are incorporated by reference, as if fully set forth herein.

28. **Violations of WAC 284-30 and the WCPA.** Washington has adopted the Unfair Claims Settlement Practices Act under Chapter 284-30, *et seq.* of the WAC. Kinsale violated the Unfair Claims Settlement Practices Act, including separate provisions of WAC 284-30-330, 350, and 380, as described above. The violation of one provision of the Unfair Claims Settlement Practices Act is a *per se* violation of the WCPA, entitling OPC to the exemplary damages, attorney fees, and costs. Kinsale also committed non *per se* violations of the WCPA.

29. **Damages.** As a direct and proximate cause of Kinsale's conduct, OPC has suffered damages in an amount to be established at trial.

**SEVENTH CLAIM: VIOLATION OF THE
INSURANCE FAIR CONDUCT ACT (RCW 48.30.015)**

30. **Incorporation by Reference.** The allegations of the preceding paragraphs are incorporated by reference, as if fully set forth herein.

31. **IFCA Notice.** On January 10, 2022, OPC filed a 20-day IFCA Notification Sheet with the Office of the Insurance Commissioner. This written notice, along with the bases for OPC's IFCA cause of action, was also provided to Kinsale. On February 11, 2022, Kinsale responded to the IFCA notice but did not cure its IFCA violations.

32. **Violations of IFCA.** Kinsale has unreasonably denied OPC's Claim for coverage and payment of Policy benefits and has violated WAC 284-30 *et seq.* as described above.

1 Kinsale's actions are violations of IFCA, entitling OPC to actual, compensatory, and multiplied
2 damages, attorney fees, and costs.
3

4
5 33. **Damages.** As a direct and proximate cause of Kinsale's conduct, OPC has
6 suffered damages in an amount to be established at trial.
7

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, OPC prays for the following relief:
11

12
13 A. **Declaratory Judgment.** That this court declare and decree that Kinsale is liable
14 for its full \$5 million limit of liability.
15

16
17 B. **Breach of Contract.** That this court declare and decree Kinsale breached the
18 Policy.
19

20
21 D. **Extra Contractual Violations.** That this court declare and decree Kinsale
22 breached the covenant of good faith and fair dealing, violated the Washington Administrative
23 Code 284-30, *et seq.* and the Unfair Claims Settlement Practices Act, and violated the WCPA
24 and IFCA.
25
26

27
28 E. **Money Damages.** That OPC be awarded money damages in its favor and against
29 Kinsale for the Claim, and any and all other damages, benefits, and reimbursements to which
30 OPC is entitled under the provisions of the Policy, at common law, and/or under the WCPA and
31 IFCA, together with pre-judgment and post-judgment interest.
32
33

34
35 F. **Attorneys' Fees and Costs of Suit.** That OPC be awarded its reasonable
36 attorneys' fees and costs, including, without limitation, actual attorneys' fees pursuant to
37 *Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991).
38
39

40
41 G. **Other Relief.** For such further relief as the Court deems just, proper, and
42 equitable.
43
44
45

1 DATED this 15th day of February, 2022.

2
3 **GORDON TILDEN THOMAS & CORDELL LLP**
4 Attorneys for Plaintiff Oregon Potato Company

5
6 By 

7 Dale L. Kingman, WSBA #07060

8 Greg D. Pendleton, WSBA #38361

9 Brendan Winslow-Nason, WSBA #39328

10 600 University Street, Suite 2915

11 Seattle, Washington 98101

12 206.467.6477

13 dkingman@gordontilden.com

14 gpendleton@gordontilden.com

15 bwinslow-nason@gordontilden.com
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45